Form J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Bibek Chaudhuri

CRR 3297 of 2019

Arpita Mukherjee @ Arpita Dutta Mukherjee & Anr.
-Versus-
The State of West Bengal & Anr.

For the Petitioners : Mr. Debajyoti Deb.

For the State : Mr. Saswata Gopal Mukherjee,
Mr. Arijit Ganguly,
Mr. Sanjib Kumar Dan.

For O.P. No.2 : Mr. Manjit Singh.

Heard & Judgment On : 22nd June, 2021.

This is an application under Section 482 of the Code of Criminal Procedure filed by the accused persons/petitioners praying for quashing of charge-sheet no. 23 of 2019 dated 31st January, 2019 under Section 420/468/120B of the Indian Penal Code and all further proceedings in connection with G. R. Case No. 4262 of 2017 corresponding to Barasat Police Station Case No. 917 of 2017 dated 9th November, 2017 under Section 420/468/120B of the Indian Penal Code.

The petitioner No. 1 is the divorced wife of opposite party No. 2. Petitioner no. 2 is the present husband of petitioner no. 1. It is sufficient to mention for the purpose of this case that in the wedlock between the petitioner no. 1 and opposite party no. 2 a male child was born on 13th February, 2007. Subsequently, marriage between the petitioner no. 1 and opposite party no. 2 was dissolved by a decree of divorce sometimes in July, 2010. The petitioner no. 1 got married to petitioner no. 2 sometimes in April, 2011. Since then, they are residing together as husband and wife. The minor child of the petitioner no. 1 has also been residing with the petitioners. The opposite party no. 2 has filed an application under the Guardians and Wards Act before the competent Court praying for custody of the said child. The said case is still pending for final decision.

In the meantime, the opposite party no. 2 filed an application under Section 156(3) of the Code stating, *inter alia*, that sometimes in 2017 he came to know that the petitioners surreptitiously and illegally changed the surname of his son from 'Mitra' to 'Mukherjee' by suppression of fact. It was apprehended by the opposite party no. 2 that the petitioners must have placed some forged documents for the change in the surname of his son. The petitioners/accused persons not only suppressed the actual fact before various institutions but also suppressed the factual position and/or pendency of the case under the

Guardians and Wards Act and for such act the accused persons conspiring with each other must have placed some fake and forged documents before the institution for illegal change of surname of the son of the opposite party no. 2 from 'Mitra' to 'Mukherjee'.

Mr. Deb, Learned Advocate for the petitioners submits that the petition of complaint under Section 156(3) of the Code which was treated as F.I.R. does not disclose any offence under Sections 420/468/120B of the Indian Penal Code. However, police submitted charge-sheet against the petitioners. On perusal of the brief facts of the chare-sheet it is ascertained that the said charge-sheet was submitted on the basis of surmise and conjecture without collecting any documentary evidence by the Investigating Officer. This is apparent from the charge-sheet itself where the investigating Officer stated that the accused persons committed cheating and forgery as they must have placed some forged documents before the institution for change of name of son from 'Aayush Mitra' to 'Aayush Mukherjee' without any consent of the complainant. It is submitted by Mr. Deb that everywhere the son of the petitioner no. 1 and opposite party no. 2 is described as 'Aayush Mitra' but in the school record a question cropped up as to whether the surname of the son of the petitioner no. 1 and opposite party no. 2 is 'Mitra' when the petitioner no. 1 being the mother of the said son uses the surname 'Mukherjee'. Only at that time the petitioner no. 1 submitted the decree of dissolution of marriage between her and opposite party no. 2 and her subsequent marriage with the petitioner no. 2. She also informed the school authority that she is maintaining the surname of her second husband. Then only in the school record the surname of 'Aayush' was changed to 'Mukherjee'.

According to Mr. Deb, the specific act of the petitioners does not disclose any offence under Sections 420/468/120B of the Indian Penal Code and accordingly, charge-sheet may be quashed.

Mr. Manjit Singh, Learned Advocate for the opposite party no. 2, on the other hand, submits that the petitioners manufactured some forged documents to change the name of the son of the opposite party no. 2. The said forged documents was submitted to the school authority where the son of the opposite party no. 2 reads. The said forged documents will be produced during trial. Therefore, the Investigating Officer rightly filed his charge-sheet in the instant case. It is further submitted by Mr. Singh that opposite party no. 2 is the biological father of 'Aayush'. He has filed an application under Act VIII of 1890 till the disposal of the said application. The petitioners should not change the surname of the son of the opposite party no. 2 and the ingredients of forgery is forthcoming from the act and conduct of the petitioners.

Having heard the Learned Advocates for the petitioners and opposite parties and on careful perusal of the entire evidence on record, it is found that in all documents, viz., Birth Certificate, L.I.C. Premium Certificate, Adhaar Card etc. of the child, name of the child was recorded as 'Aayush Mitra'. Even in joint pass book of the Bank Account opened on 7th November, 2018 the name of the child is recorded as 'Aayush Mitra'. Only in the school record his name was recorded as 'Aayush Mukherjee'. Allegation of the *de facto* complainant/opposite party no. 2 is that the petitioners have forged certain documents to change the surname of his son in the school record. On perusal of the charge-sheet, especially the particulars of witnesses to be examined, I do not find any name of the school authority where the child reads. The Investigating Officer did not seize any document to *prima facie* prove the charge under Section 468 of the Indian penal Code.

Section 463 of the Indian Penal Code defines forgery as hereunder.

"463. Forgery. *– Whoever makes any false documents [or false electronic record] or part of a document [or electronic record] with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with* *intent to commit fraud or that fraud may be committed, commits forgery*.

Section 468 deals with the offence of forgery for the purpose of cheating. During investigation, the Investigating Officer has failed to collect any evidence that the petitioners had made some false document with intent to cause damage or injury to opposite party no. 2. The Investigating Officer has also failed to collect any evidence to show that even a single document was prepared by the petitioners for the purpose of cheating. There is also no evidence collected by the Investigating Officer in support of the allegation of cheating against the petitioners to dishonestly induce the opposite party no. 2 to deliver any property to them.

Since the impugned charge-sheet bearing no. 23 of 2019 dated 31^{st} January, 2019 does not disclose any offence against the petitioners. The same is quashed.

The revisional application is, thus, **allowed** on contest, however, without cost.

Let a copy of this order be sent to the Learned Court below forthwith.

Parties are at liberty to act on the server copy of the order.

(BIBEK CHAUDHURI, J.)

Srimanta, A.R. (Court)